

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

JOETTE PETE, *et al.*,

Movant,

v.

CIVIL ACTION NO. 3:19-MC-26

BIG PICTURE LOANS, *et al.*,

Respondents.

LULA WILLIAMS, *et al.*,

Plaintiffs,

v.

CIVIL ACTION NO. 3:17-CV-461

BIG PICTURE LOANS, LLC, *et al.*,

Defendants.

RENEE GALLOWAY, *et al.*,

Plaintiffs,

v.

CIVIL ACTION NO. 3:18-CV-406

BIG PICTURE LOANS, LLC, *et al.*,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION TO SEAL

Plaintiffs, by counsel, pursuant to Rule 5 of the Local Rules of the United States District Court for the Eastern District of Virginia, move to seal Exhibit B to Plaintiffs' Response to Defendant Martorello's 30(d) motion. In support of their motion, Plaintiffs state as follows:

To present necessary information in support of their opposition to Matt Martorello's 30(d) motion, Plaintiffs needed to file Exhibit B, which is a transcript of portions of the Deposition of Joette Pete that have been designated "Confidential", under seal. Plaintiffs also need to file an unredacted version of their Memorandum of Points and Authorities under seal. Generally, there is a First Amendment and a common law qualified public right of access to judicial proceedings, including the records of all such proceedings. *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606-07 (1982); *Nixon v. Warner Comm'ns Inc.*, 435 U.S. 589, 597 (1978). One exception to the public's right of access is documents over which a party has asserted privilege. Fed. R. Civ. P. 26(b)(5)(B) (providing that privileged information cannot be disclosed and the receiving party must "present the information to the court under seal for a determination of the claim"). In addition, there is a strong public policy in protecting informers who report criminal activity to law enforcement. This policy is recognized in the informant's privilege which is designed to "protect and foster the interests of law enforcement by encouraging citizens to aid criminal justice without fear of public disclosure." *United States v. Smith*, 780 F.2d 1102, 1107 (4th Cir. 1985); *see also Roviario v. United States*, 353 U.S. 53, 59 (1957) ("The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation."). Although the privilege generally can only be invoked by the government, the

privilege should nevertheless be considered when determining whether particular discovery is permissible. *Gill v. Gulfstream Park Racing Ass’n., Inc.*, 399 F.3d 391, 402 (1st Cir. 2005) (finding that even though informant’s privilege could not be formally invoked, the Court should nevertheless consider “the public interest, the need for confidentiality, and privacy interests” in determining whether discovery regarding informants was permissible).

In accordance with the Local Rules, Plaintiffs provide the following description of the documents sought to be filed under seal: Exhibit B is an excerpt of the transcript of non-party Joette Pete’s deposition, which has been designated confidential because it discusses information unrelated to this lawsuit and implicates confidential conversations involving law enforcement. Plaintiffs also seek to seal an unredacted version of the Memorandum they filed in support of their opposition to Mr. Martorello’s motion. The redactions are appropriate because they discuss the confidential excerpts from Ms. Pete’s deposition transcript described above.

For the reasons stated above, Plaintiffs respectfully request that the Court grant their Motion to Seal.

Date: June 11, 2020

/s/ Leonard A. Bennett, VSB #37523
Leonard A. Bennett, VSB #37523
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J. Clyde Morris Blvd., Ste. 1-A
Newport News, VA 23601
Telephone: (757) 930-3660
Facsimile: (757) 930-3662
Email: lenbennett@clalegal.com

Kristi C. Kelly, Esq., VSB #72791
Andrew J. Guzzo, Esq., VSB #82170
Casey S. Nash, Esq., VSB #84261
KELLY GUZZO, PLC
3925 Chain Bridge Road, Suite 202
Fairfax, VA 22030
(703) 424-7572
(703) 591-0167 Facsimile
Email: kkelly@kellyguzzo.com
Email: aguzzo@kellyguzzo.com
Email: casey@kellyguzzo.com

E. Michelle Drake
John G. Albanese
BERGER MONTAGUE PC
43 SE Main Street, Suite 505
Minneapolis, MN 55414
Tel.: 612.594.5999
Fax: 612.584.4470
Email: emdrake@bm.net
Email: jalbanese@bm.net

Beth E. Terrell
Jennifer Rust Murray
Elizabeth A. Adams
TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, WA 98103
Tel.: (206) 816-6603
Fax.: (206) 319-5450
Email: bterrell@terrellmarshall.com
Email: jmurray@terrellmarshall.com
Email: eadams@terrellmarshall.com

Attorneys for Plaintiffs and Proposed Classes

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

Date: June 11, 2020

/s/ Leonard A. Bennett, VSB #37523
Leonard A. Bennett, VSB #37523
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J. Clyde Morris Blvd., Ste. 1-A
Newport News, VA 23601
Telephone: (757) 930-3660
Facsimile: (757) 930-3662
Email: lenbennett@clalegal.com

Kristi C. Kelly, Esq., VSB #72791
Andrew J. Guzzo, Esq., VSB #82170
Casey S. Nash, Esq., VSB #84261
KELLY GUZZO, PLC
3925 Chain Bridge Road, Suite 202
Fairfax, VA 22030
(703) 424-7572
(703) 591-0167 Facsimile
Email: kkelly@kellyguzzo.com
Email: aguzzo@kellyguzzo.com
Email: casey@kellyguzzo.com

E. Michelle Drake
John G. Albanese
BERGER MONTAGUE PC
43 SE Main Street, Suite 505
Minneapolis, MN 55414
Tel.: 612.594.5999
Fax: 612.584.4470
Email: emdrake@bm.net
Email: jalbanese@bm.net

Beth E. Terrell
Jennifer Rust Murray
Elizabeth A. Adams
TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, WA 98103
Tel.: (206) 816-6603
Fax.: (206) 319-5450
Email: bterrell@terrellmarshall.com
Email: jmurray@terrellmarshall.com
Email: eadams@terrellmarshall.com

Attorneys for Plaintiffs and Proposed Classes